



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,726	08/01/2003	Ernest L. Smith	HVCC.89174	2785
5251	7590	06/28/2004	EXAMINER	
SHOOK, HARDY & BACON LLP			SMALLEY, JAMES N	
2555 GRAND BLVD			ART UNIT	
KANSAS CITY,, MO 64108			PAPER NUMBER	

3727

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/632,726

Applicant(s)

SMITH, ERNEST L.

Examiner

James N Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/05/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 14-17 rejected under 35 U.S.C. 102(b) as being anticipated by Young US 3,915,355.

Young '355 teaches a rotatable closure, having a cylindrical sidewall (20) defining an aperture (defined by (22)), a lower section (periphery of (16)) having a smaller diameter than an upper section (periphery of (20)), circular bottom wall (16) and cavity wall (22) and (24), and having a grip pad (32), positioning mark (30), and being formed of plastic (see col. 2, lines 13-18).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Lauret FR 2,622,545.

Fuller '737, fig. 4, teaches a dispensing container closure having a generally cylindrical sidewall (414), aperture (436) extending through the sidewall, lower section having a smaller diameter than an upper section, circular top wall (412).

Fuller '737 does not teach a container body having a cavity wall coupled to the top wall and to the sidewall.

Lauret '545 teaches it is known to provide a wall (6) and (10) in contact with a radially-dispensing closure top wall and sidewall, offering the benefit of dosing of the container contents.

Art Unit: 3727

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the wall (6) and (10) taught by Lauret '545 within the closure of Fuller '737, motivated by the benefit of providing dosing of the contents.

5. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Lauret FR 2,622,545 as applied to claim 1 above, and further in view of Freese US 5,275,307.

Fuller '737 does not teach first or second finger notches.

Freese '307 teaches it is known to provide finger notches (34) on the top surface of a rotatable container closure, to facilitate rotation by a user.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Fuller '737, providing the finger notches taught by Freese '307, motivated by the benefit of providing a means to grip the closure to facilitate rotation into the operating position.

6. Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Lauret FR 2,622,545 as applied to claim 1 above, and further in view of Young US 3,915,355.

Fuller '737 does not teach a guide mark positioned on the top wall overtop the cavity.

Young '355 teaches it is known to provide the top surface of a dispensing closure with a guide mark (30), pointing towards the discharge opening, for indicating to a user the location of the discharge opening.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Fuller '737, providing the guide mark taught by Young '355, motivated by the benefit of indicating to a user the location of the discharge opening.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Lauret FR 2,622,545 as applied to claim 1 above, and further in view of Esthus US 3,093,272.

Fuller '737 does not teach a second rim projecting vertically from the top surface.

Art Unit: 3727

Esthus '272 teaches it is known to provide a rim (27) extending vertically above the top surface of a rotating dispensing closure, to provide a gripping means for rotating the closure into the operative position.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Fuller '737, providing the rim taught by Esthus '272, motivated by the benefit of providing a gripping means allowing a user to rotate the closure into operative position.

8. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Wallingford US 2,806,637.

Fuller '737, fig. 4, teaches a dispensing container closure having a generally cylindrical sidewall (414), aperture (436) extending through the sidewall, lower section having a smaller diameter than an upper section, circular top wall (412).

Fuller '737 does not teach a container body having a cavity wall coupled to the top wall and to the sidewall.

Wallingford '637 teaches it is known to provide a wall (19) in contact with a radially-dispensing closure top wall and sidewall. One having ordinary skill will recognize the channel (33) formed therein creates a flow acceleration.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the wall (19) taught by Wallingford '637 within the cap of Fuller '737, motivated by the benefit of providing a flow accelerating channel, increasing the dispensing rate of the contents of the container.

9. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Wallingford US 2,806,637 as applied to claim 1 above, and further in view of Freese US 5,275,307.

Fuller '737 does not teach first or second finger notches.

Art Unit: 3727

Freese '307 teaches it is known to provide finger notches (34) on the top surface of a rotatable container closure, to facilitate rotation by a user.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Fuller '737, providing the finger notches taught by Freese '307, motivated by the benefit of providing a means to grip the closure to facilitate rotation into the operating position.

10. Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Wallingford US 2,806,637 as applied to claim 1 above, and further in view of Young US 3,915,355.

Fuller '737 does not teach a guide mark positioned on the top wall overtop the cavity.

Young '355 teaches it is known to provide the top surface of a dispensing closure with a guide mark (30), pointing towards the discharge opening, for indicating to a user the location of the discharge opening.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Fuller '737, providing the guide mark taught by Young '355, motivated by the benefit of indicating to a user the location of the discharge opening.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Wallingford US 2,806,637 as applied to claim 1 above, and further in view of Esthus US 3,093,272.

Fuller '737 does not teach a second rim projecting vertically from the top surface.

Esthus '272 teaches it is known to provide a rim (27) extending vertically above the top surface of a rotating dispensing closure, to provide a gripping means for rotating the closure into the operative position.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Fuller '737, providing the rim taught by Esthus '272, motivated by the benefit of providing a gripping means allowing a user to rotate the closure into operative position.

12. Claims 7 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Lauret FR 2,622,545 and in view of McFarland US 1,157,883.

Fuller '737, fig. 4, teaches a dispensing container closure having a generally cylindrical sidewall (414), aperture (436) extending through the sidewall, lower section having a smaller diameter than an upper section, circular top wall (412). The closure and container are disclosed as being formed of plastic in an injection molding process.

Fuller '737 does not teach the container having a securing portion at its top folded downwardly and inwardly, or having a circular bottom wall.

McFarland '883 teaches a paperboard container having a generally round bottom wall (7) and a top portion being folded downwardly and inwardly. In col. 1, lines 45-46, McFarland '883 teaches the fold provides a neat, rigid and efficient rim for the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Fuller '737, providing the downwardly and inwardly folding rim taught by McFarland '883, motivated by the benefit of a neat, rigid and efficient rim for the container. Further, it would have been obvious to one having ordinary skill in the art, providing a generally round container bottom to the container of Fuller '737, as taught by McFarland '883, because a round container wall is a well-known mechanical expedient of the folded tube container taught by Fuller '737 and one having ordinary skill would have found it obvious to substitute one well known container bottom for another.

Fuller '737 further does not teach a container body having a cavity wall coupled to the top wall and to the sidewall.

Lauret '545 teaches it is known to provide a wall (6) and (10) in contact with a radially-dispensing closure top wall and sidewall, offering the benefit of dosing of the container contents.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the wall (6) and (10) taught by Lauret '545 within the closure of Fuller '737, motivated by the benefit of providing dosing of the contents.

Art Unit: 3727

13. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Lauret FR 2,622,545 and in view of McFarland US 1,157,883 as applied to claim 1 above, and further in view of Freese US 5,275,307.

Fuller '737 does not teach first or second finger notches.

Freese '307 teaches it is known to provide finger notches (34) on the top surface of a rotatable container closure, to facilitate rotation by a user.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Fuller '737, providing the finger notches taught by Freese '307, motivated by the benefit of providing a means to grip the closure to facilitate rotation into the operating position.

14. Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Lauret FR 2,622,545 and in view of McFarland US 1,157,883 as applied to claim 1 above, and further in view of Young US 3,915,355.

Fuller '737 does not teach a guide mark positioned on the top wall overtop the cavity.

Young '355 teaches it is known to provide the top surface of a dispensing closure with a guide mark (30), pointing towards the discharge opening, for indicating to a user the location of the discharge opening.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Fuller '737, providing the guide mark taught by Young '355, motivated by the benefit of indicating to a user the location of the discharge opening.

15. Claims 7 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Wallingford US 2,806,637 and in view of McFarland US 1,157,883..

Fuller '737, fig. 4, teaches a dispensing container closure having a generally cylindrical sidewall (414), aperture (436) extending through the sidewall, lower section having a smaller diameter than an upper section, circular top wall (412). The closure and container are disclosed as being formed of plastic in an injection molding process.

Art Unit: 3727

Fuller '737 does not teach the container having a securing portion at its top folded downwardly and inwardly, or having a circular bottom wall.

McFarland '883 teaches a paperboard container having a generally round bottom wall (7) and a top portion being folded downwardly and inwardly. In col. 1, lines 45-46, McFarland '883 teaches the fold provides a neat, rigid and efficient rim for the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Fuller '737, providing the downwardly and inwardly folding rim taught by McFarland '883, motivated by the benefit of a neat, rigid and efficient rim for the container. Further, it would have been obvious to one having ordinary skill in the art, providing a generally round container bottom to the container of Fuller '737, as taught by McFarland '883, because a round container wall is a well-known mechanical expedient of the folded tube container taught by Fuller '737 and one having ordinary skill would have found it obvious to substitute one well known container bottom for another.

Wallingford '637 further teaches it is known to provide a wall (19) in contact with a radially-dispensing closure top wall and sidewall. One having ordinary skill will recognize the channel (33) formed therein creates a flow acceleration.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the wall (19) taught by Wallingford '637 within the cap of Fuller '737, motivated by the benefit of providing a flow accelerating channel, increasing the dispensing rate of the contents of the container.

16. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Wallingford US 2,806,637 and in view of McFarland US 1,157,883 as applied to claim 1 above, and further in view of Freese US 5,275,307.

Fuller '737 does not teach first or second finger notches.

Freese '307 teaches it is known to provide finger notches (34) on the top surface of a rotatable container closure, to facilitate rotation by a user.

Art Unit: 3727

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Fuller '737, providing the finger notches taught by Freese '307, motivated by the benefit of providing a means to grip the closure to facilitate rotation into the operating position.

17. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Wallingford US 2,806,637 and in view of McFarland US 1,157,883 as applied to claim 1 above, and further in view of Young US 3,915,355.

Fuller '737 does not teach a guide mark positioned on the top wall overtop the cavity.

Young '355 teaches it is known to provide the top surface of a dispensing closure with a guide mark (30), pointing towards the discharge opening, for indicating to a user the location of the discharge opening.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Fuller '737, providing the guide mark taught by Young '355, motivated by the benefit of indicating to a user the location of the discharge opening.

18. Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller US 2,347,737 in view of Young US 3,915,355 and in view of McFarland US 1,157,883.

Fuller '737, fig 4, teaches a container closure arrangement whereby a dispensing cap closure is fixed within the open end of a container, and has an apertured sidewall (436), to be rotated into alignment with a dispensing aperture (434) in the container sidewall.

Fuller '737 does not teach the container having a securing portion at its top folded downwardly and inwardly, or having a circular bottom wall.

McFarland '883 teaches a paperboard container having a generally round bottom wall (7) and a top portion being folded downwardly and inwardly. In col. 1, lines 45-46, McFarland '883 teaches the fold provides a neat, rigid and efficient rim for the container.

Art Unit: 3727

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Fuller '737, providing the downwardly and inwardly folding rim taught by McFarland '883, motivated by the benefit of a neat, rigid and efficient rim for the container.

Further, the closure of Fuller '737 does not teach a cylindrical sidewall coupled to a circular bottom wall, and including a cavity wall forming an open-ended cavity.

Young '355 teaches a rotatable closure, having a cylindrical sidewall (20) defining an aperture (defined by (22)), a lower section (periphery of (16)) having a smaller diameter than an upper section (periphery of (20)), circular bottom wall (16) and cavity wall (22) and (24), and having a grip pad (32), positioning mark (30), and being formed of plastic (see col. 2, lines 13-18). Examiner notes the cap of Young '355 could be applied to the container taught by Fuller '737, and could perform the equivalent function of opening and closing a dispensing opening in the container sidewall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container closure arrangement taught by Fuller '737, replacing the closure cap with the closure cap taught by Young '355, because the cap of Young '355 is a mere mechanical expedient of the cap taught by Fuller '737, and one having ordinary skill would have found it obvious to replace one cap with an equivalent cap capable of performing the function of being rotated into an open position from a closed position.

### ***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 4,310,418

US 3,140,799

US 3,871,522

US 2,112,125

US 3,471,058

US 1,315,394

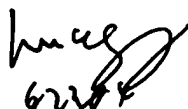
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

Art Unit: 3727

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
LEE YOUNG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700